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ARNOLD & PORTER



December 3, 2003

~~Receipt~~ 1631AA

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
DEC 03 2003
TECH CENTER 1600/2900

Attn: Mail Stop Petition

Re: U.S. Patent Application No. 10/020,338
Filed: December 12, 2001
Title: Nucleic Acid Molecules and Other Molecules Associated
with Plants
Applicants: Scott E. ANDERSEN *et al.*
Atty. Docket: 16517.282

Sir:

The following documents are forwarded herewith for appropriate action by the U.S. Patent and Trademark Office (PTO):

1. a Request to Rescind Prior Request and Certification under 37 C.F.R. § 1.213(b), including an Exhibit A—copy of Request and Certification under 35 U.S.C. 122(b)(2)(B)(i);
2. a Petition for Express Abandonment under 37 C.F.R. § 1.138(c) in Order to Avoid Publication, including an Exhibit A—copy of Request and Certification under 35 U.S.C. 122(b)(2)(B)(i), (in duplicate); and
3. a return postcard.

Please stamp the attached postcard with the filing date of these documents and return it to our courier.

Applicants request that the \$130.00 Petition fee be charged to Deposit Account No. 50-2387, referencing docket number 16517.282.

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Commissioner for Patents
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Applicants do not believe any fees, other than the above fee (\$130), are due in conjunction with this filing. However, if any fees under 37 C.F.R. §§ 1.16 or 1.17 are required in the present application, including any fees for extensions of time, then the Commissioner is hereby authorized to charge such fees to Arnold & Porter Deposit Account No. 50-2387, referencing matter number 16517.282. A duplicate copy of this letter is enclosed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Holly Logue Prutz".

Holly Logue Prutz (Reg. Attorney No. 47,755)
David R. Marsh (Reg. Attorney No. 41,408)

Attachments

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re application of:

Scott E. ANDERSEN *et al.*

Appl. No.: 10/020,338

Filed: December 12, 2001

Title: **Nucleic Acid Molecules and Other
Molecules Associated with Plants**

Confirmation No. 1682

Art Unit: 1631

Examiner: James MARTINELL

Atty. Docket: 16517.282/38-21(52272)B

**Request to Rescind Prior Request and Certification
Under 37 C.F.R. § 1.213(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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TECH CENTER 1600/2900

Attn: Mail Stop Petition

Sir:

Applicants hereby request that the Request for Non-Publication and Certification Under 35 U.S.C. §122(b)(2)(B)(i) filed on December 12, 2001, in the above-captioned U.S. application be rescinded in accordance with 37 C.F.R. § 1.213(b).

On December 12, 2001, the above-captioned U.S. application was filed with a Request for Non-Publication, which contained a certification under 35 U.S.C. § 122(b)(2)(B)(i), including a statement that the invention "has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing." (Request attached hereto as Exhibit A). Thereafter it was discovered that one or more foreign applications, which may be related to the invention disclosed in the above-captioned U.S. application, were previously filed in another country or under a multilateral agreement that requires publication at eighteen months after filing. One such application was filed on April 13, 2001 (the "Foreign Application").

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Therefore, Applicants believe that the certification under 35 U.S.C. § 122(b)(2)(B)(i) filed in the above-captioned application may be incorrect. Accordingly, Applicants wish to rescind the request for non-publication filed on December 12, 2001, for the above-captioned U.S. application. Applicants believe the certification in the above-captioned U.S. Application may be incorrect because the Foreign Application is directed to one or more nucleic acid or amino acid sequences, or both, that exhibit at least 85% sequence identity over 80% of their length to one or more nucleic acid or amino acid sequences, or both, disclosed in the above-captioned U.S. Application.¹

In light of the above, Applicants hereby explicitly notify the Office of the filing of the Foreign Application on April 13, 2001, and rescind the request for non-publication submitted in U.S. Application Serial No. 10/020,338 pursuant to 37 C.F.R. § 1.213(b). Applicants assert that any incorrect certification made under 35 U.S.C. § 122(b)(2)(B)(i) was inadvertent.

¹ Applicants make no assertion as to whether nucleic acid sequences or amino acid sequences that exhibit at least 85% identity over 80% of their length either are or are not an "invention disclosed in the application" within the meaning of 35 U.S.C. § 122.

Should the Commissioner require additional information, he is invited to contact the undersigned at the number provided below.

Respectfully submitted,



Holly Logue Prutz (Reg. Attorney No. 47,755)
David R. Marsh (Reg. Attorney No. 41,408)

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Date: December 3, 2003

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EXHIBIT A

PTO/SB/35 (11-00)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

REQUEST AND CERTIFICATION UNDER 35 U.S.C. 122(b)(2)(B)(i)	First Named Inventor	Scott E. Andersen
	Title	NUCLEIC ACID MOLECULES AND OTHER MOLECULES ASSOCIATED WITH PLANTS
	Attorney Docket No.	38-21(52272)B

I hereby certify that the invention disclosed in the attached application **has not and will not** be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing. I hereby request that the attached application not be published under 35 U.S.C. 122(b).

12/12/01
Date

Lawrence M. Lavin Jr
Reg No 307968
Signature

LAURENCE M. LAVIN JR
Typed or printed name

This request must be signed in compliance with 37 CFR 1.33(b) and submitted with the application upon filing.

Applicant may rescind this nonpublication request at any time. If applicant rescinds a request that an application not be published under 35 U.S.C. 122(b), the application will be scheduled for publication at eighteen months from the earliest claimed filing date for which a benefit is claimed.

If applicant subsequently files an application directed to the invention disclosed in the attached application in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant **must** notify the United States Patent and Trademark Office of such filing within forty-five (45) days after the date of the filing of such foreign or international application. **Failure to do so will result in abandonment of this application (35 U.S.C. 122(b)(2)(B)(iii)).**

Burden Hour Statement: This collection of information is required by 37 CFR 1.213(a). The information is used by the public to request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that request). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending on the needs of the individual cases. Any comments on the amount of time you required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, 20231. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Application, DC Washington, DC 20231.**